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No. 860

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

ILLINOIS PROTESTANT CHILDREN'S HOME, An Illinois Not for Profit Corporation, *Petitioner*,

v.

DEPARTMENT OF PUBLIC WELFARE OF STATE OF ILLINOIS, OTTO BETTAG, Director, CLARK MILEY, Hearing Officer, *Respondents*.

**Petition for Writ of Certiorari to the Supreme Court of the State of Illinois**

## REPLY BRIEF

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March 27, 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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## REPLY BRIEF

Respondents' cursory treatment of the merits (Opposition to Petition, pages 4-5) misunderstands the issue petitioner presented, and utterly fails to demonstrate the validity of the decision below or the reasons why this case does not warrant review.

The issue is not, as respondents would have it, a resolution of conflicting evidence before an administrative tribunal. It is whether the Illinois Department of Public Welfare lacked statutory authority to revoke a license of a child welfare agency when its findings related almost entirely to an alleged failure to

keep records and file reports, a failure which the statute does not make a ground for revocation and in fact makes punishable criminally. Just as "state factual determinations not fairly supported by the record cannot be conclusive of federal rights", *Townsend* v. *Sain*, 31 U. S. Law Week 4297, 4304 (March 19, 1963), so neither can state determinations not authorized by state law be conclusive of federal rights. By sanctioning so harsh a result as license revocation on an impermissible ground, the decision of the Court below violated fundamental legal principles and raised a substantial due process question. Respondents' failure to address themselves to this issue bespeaks the soundness of petitioner's contention as forcefully as the action of the 1957 Illinois Legislature in hastily adding to the statutory grounds for revocation, after the Hearing Examiner's decision, the very ground upon which he relied without such statutory authority—namely, refusal to submit reports and records.

*Parker* v. *Illinois*, 333 U.S. 571 (1948) does not preclude this Court from exercising its certiorari jurisdiction here. Petitioner here is not raising the type of constitutional issue of which the Supreme Court of Illinois had jurisdiction on direct appeal, and thus the *Parker* rule is inapplicable. In civil cases, the Illinois Supreme Court has consistently held that direct appeal on a constitutional issue is limited to cases where the constitutional validity of the statute is challenged. In cases where the constitutional issue related to the application of the statute in an unconstitutional manner, the appeal lies to the Appellate Court. *Biggs* v. *Plebanek*, 407 Ill. 562, 95 N.E. 2d 870 (1950); *Maupin* v. *Maupin*, 403 Ill. 316, 86 N.E. 2d 206 (1949); *Ernhart* v. *Elgin, Joliet and Eastern Railway Company*, 339 Ill.

512, 78 N.E. 2d 257 (1948). Obviously, since appeal thereon such a constitutional question is permitted, no waiver of that question can be found. Moreover, where "a question of fact is involved even though the validity of a statute is questioned, no direct appeal may be taken" to the Illinois Supreme Court. *Foertsch* v. *Fox*, 402 Ill. 447, 84 N.E. 2d 388. Here petitioner is not challenging the validity of the statute as such, but its application in an unconstitutional manner. It is urging a violation of due process because the state administrative agency erred in acting outside the proper scope of its statutory authority to deprive a child welfare agency, in operation for 44 years, of its license.

For the foregoing reasons, and for the reasons set forth in the Petition, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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